

Judge: Overstreet
Chapter: 11
Hearing: 2/17/2012
Place: Seattle
Time: 9:30 a.m.

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON

In re:)
DANIEL C. PETERSON,) Case No. 12-10861
Debtor.)
) UNITED STATES' OBJECTION TO
) MOTION FOR ORDER EXTENDING
) AUTOMATIC STAY AS TO INTERNAL
) REVENUE SERVICE
)

COMES NOW the United States of America, by and through its attorneys, Jenny A. Durkan, United States Attorney for the Western District of Washington, and Catherine L. Campbell, Special Assistant United States Attorney for said District, on behalf of its Agency, the Internal Revenue Service (Service), and hereby objects to the debtor's Motion for Order Extending Automatic Stay as to the Internal Revenue Service. The Service submits the following grounds in support of its response:

1. On January 31, 2012, the debtor filed the petition under Chapter 11 in the above case.

2. On June 12, 2011, the court entered an order dismissing the Chapter 11 proceeding brought by the debtor in case number 10-19218. The petition in this case was filed just after the expiration of the 180 day period during which the

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debtor was precluded from filing a petition after obtaining voluntary dismissal of the prior case in which relief from the automatic stay was granted. See 11 U.S.C. § 109(g)(2).

3. The debtor filed a U.S. Individual Income Tax Return (Form 1040) for tax year 2008 seeking refund of tax based upon his report of a false withholding credit in the amount of \$1,030,028.00 utilizing a fraudulent "Form 1099-OID" tax scheme. See Chief Counsel Notice 2010-33 ¶ (21), 2010-1 C.B. 609. On August 24, 2009, as a result of the fraudulent withholding claim on the debtor's Form 1040, a refund in the amount of \$666,694.00 was issued to the debtor.

4. On August 5, 2010, the debtor filed a Chapter 11 petition in case number 10-19218. At the 341 meeting in that case, a representative of the Service questioned the debtor about the 2008 tax refund. The debtor said he was working on the tax matters with his accountant, Willie Hughes, who was in attendance at the hearing. The debtor admitted that he received a tax refund for tax year 2008 in the amount of \$666,694.00 after claiming withholding of \$1,030,028.00. The debtor admitted that he deposited the refund in an account at Chase Bank in the name of Ascending Society. Ascending Society is a corporation sole formed in Washington State on July 31, 2009. See Rev. Rul. 2004-27, 2004-1 C.B. 625 (corporation sole form used for tax avoidance purposes).

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1 The debtor's counsel stated that the debtor disclosed the
2 transfer of \$591,000.00 from the Chase account to an account at
3 U.S. Bank in the name of Ascending Outreach. The debtor was a
4 signatory on that Ascending Outreach account. Ascending
5 Outreach is a corporation sole formed in Washington State on
6 July 31, 2009.

7 The debtor admitted and listed on the schedules in the
8 prior bankruptcy a transfer of \$291,000.00 from the Ascending
9 Outreach account to Keith Pelzel. The debtor said at the 341
10 meeting that he owed Mr. Pelzel money, but he would not state
11 the amount owed except to admit that it was less than
12 \$25,000.00. The debtor admitted opening an account at the
13 Bellagio into which he transferred \$95,000.00 for what he
14 said was a "business meeting." The Service recovered by means
15 of a levy \$150,114.00 transferred by the debtor from the U.S.
16 Bank account to Northwest Territorial Mint. That transfer was
17 listed on amended schedules in the prior bankruptcy.

18 5. After several creditors were granted relief from stay
19 to foreclose their interests in the debtor's real property, the
20 debtor filed a motion to voluntarily dismiss the Chapter 11
21 proceeding in case number 10-19218 because he could not
22 reorganize on account of the granting of the relief from stay
23 motions.

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6. If a case is filed by a debtor who is an individual in a case under Chapter 11, and, if a case of the debtor was pending within the preceding 1-year period but was dismissed, the stay under section 362(a) with respect to any action taken with respect to a debt or property securing such debt shall terminate on the 30th day after the filing of the later case.

11 U.S.C. § 362(c)(3)(A). Section 362(c)(3)(B) of Title 11 of the United States Code provides that, upon motion to a party in interest and after notice and hearing completed within the 30 day period before the expiration of the stay, the court may continue the stay if the moving party demonstrates that the later case has been filed in good faith as to creditors stayed by the filing.

7. Pursuant to section 362(c)(3)(C) the case is presumed to not be filed in good faith as to all creditors if there has not been a substantial change in the debtor's financial or personal affairs since the dismissal of the prior case or there has not been any other reason to conclude that the later case will be concluded with a confirmed plan that will be fully performed in a Chapter 11 case.

8. In this case, the financial affairs of the debtor have not changed since the dismissal of the prior case in July, 2011. In the prior case, the Service filed an amended proof of claim in the amount of \$951,821.60 of which \$942,752.78 was a

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1 secured claim or a claim entitled to priority under 11 U.S.C. §
2 507(a)(8). In the prior case the debtor listed assets in the
3 amount of \$1,361,175.00 and liabilities in the amount of
4 \$3,288,776.46 on the Summary of Schedules. On Schedule J in the
5 prior case, the debtor listed negative monthly income in the
6 amount of \$6,713.00. The debtor moved to dismiss that Chapter
7 11 case because he could not propose a confirmable plan.

8 9. In the current case, the Service has filed a proof of
9 claim in the amount of \$1,047,749.28 of which \$1,047,549.28 is
10 a secured claim. The portion of the secured claim exceeding
11 \$66,413.50 will be entitled to priority under 11 U.S.C. §
12 507(a)(8) if it is rendered unsecured. In this case, the
13 debtor lists assets in the amount of \$1,207,290.00 and
14 liabilities in the amount of \$2,536,659.46 on the Summary of
15 Schedules. On Schedule J in this case, the debtor lists
16 negative monthly income in the amount of \$3,553.00.

17 10. The financial situation of the debtor has not changed
18 in any meaningful way. According to the Summary of Schedules
19 in this case, the assets have decreased by \$143,885.00 and the
20 liabilities have decreased by \$752,117.00. That does not take
21 into account the increase in the amount of the Service's claim
22 to \$1,047,549.28. Any change is meaningless because the debtor
23 did not have the ability to fund a confirmable Chapter 11 plan
24 in the prior case with his negative monthly income of \$6,713.00

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and he cannot fund a confirmable plan with negative monthly income in this case of \$3,553.00.

11. The debtor fraudulently obtained a false refund of \$666,694.00 for tax year 2008 by claiming withholding which he never paid in the amount of \$1,030,028.00. The debtor then created bogus entities, corporations sole which have been used to facilitate tax avoidance schemes, to conceal the stolen funds. The debtor also transferred funds to other third parties and to his account at the Bellagio in an attempt to defeat collection efforts of the Service.

12. In his motion, the debtor does not explain any financial or personal changes which affect his inability to fund a confirmable Chapter 11 plan. There is no evidence that the debtor can fund a confirmable Chapter 11 plan. So, under section 362(c)(3)(A), the automatic stay should not extend beyond the 30 day period after the filing of the petition in this case.

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1 WHEREFORE, the United States prays that the debtor's Motion
2 for Order Extending Automatic Stay be denied.

3 DATED this 15th day of February, 2012.

4 JENNY A. DURKAN
5 United States Attorney

6 By: /s/ Catherine L. Campbell
7 Catherine L. Campbell, WSBA 2482
8 Special Assistant U.S. Attorney
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In re:) BANKRUPTCY NO. 12-10861
)
DANIEL C. PETERSON,)
) CERTIFICATE OF SERVICE
)
Debtor.)
)
)

The undersigned hereby certifies that (s)he is an employee of the Office of the Chief Counsel, Internal Revenue Service, Seattle, Washington, and is a person of such age and discretion as to be competent to serve papers; that on the date set forth below (s)he served a copy (or copies) of the UNITED STATES' OBJECTION TO MOTION FOR ORDER EXTENDING AUTOMATIC STAY AS TO INTERNAL REVENUE SERVICE on the persons hereinafter named by ECF:

Jeffrey B. Wells William L. Courshon
Attorney for Debtor Office of U.S. Trustee

DATED this 15th day of February, 2012.

/s/ Catherine L. Campbell

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